

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

Date: JAN 17 1996

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Form: 1120

Tax Years: All Tax Years

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

We make our ruling for the following reason(s):

You are not organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3). You are carrying on substantial nonexempt purposes and you operate for the private benefit of certain private individuals.

Donors may not deduct contributions to your organization under section 170 of the Code.

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this ruling to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. The filing of a declaratory judgment suit under

Re: [REDACTED]

section 7428 does not stay the processing of income tax returns and assessment of any taxes.

In accordance with section 6104(c) of the Code, we will notify the appropriate State officials of this action.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your key District Director.

Sincerely,

(signed) [REDACTED]

[Signature]
[REDACTED]
Director, Exempt Organizations
Division

cc: [REDACTED]

cc: Attorney [REDACTED]

10/31/95

10/31/95

11/20/95

11/21/96

1/2/96

[REDACTED]
[REDACTED]
[REDACTED]
NOV - 8 1993

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

You were established to provide rental housing to low-income persons. You have indicated that you define very low-income as 50% or less of local median income and low-income as 80% or less of local median income. With respect to projects governed by section 42 of the Code, you define low-income as 60% or less of local median income.

You are governed by a Board of Directors consisting of five people: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] and [REDACTED] are financial consultants. [REDACTED] is a registered representative at an investment company. [REDACTED] is a manager at a firm that publishes technical journals. [REDACTED] is a teacher. [REDACTED] and [REDACTED] are husband and wife and [REDACTED] and [REDACTED] are husband and wife. [REDACTED] is unrelated to the other directors.

You have a general partnership interest in [REDACTED], the owner of a proposed [REDACTED] unit low-income apartment project. The limited partner is a wholly owned subsidiary of [REDACTED]. [REDACTED] made a construction loan to the partnership. The limited partner receives [REDACTED]% of the profits and losses of the partnership and you receive the remaining [REDACTED]%. Rents will be based upon a percentage of the occupants' incomes. Pursuant to a contract with the regulatory authority, the limited partnership is required to rent 100% of the units to persons with income of less than 60% of the median income.

Under the limited partnership agreement, you are designated as the Tax Matters Partner. It also provides that you are required to use your best efforts to realize the economic projections concerning the investors' benefit specified in the contract. The limited partner may remove you as the general partner for any action or failure to act by you that causes a

reduction in the IRR of the limited partner or a loss of material financial benefits as projected under the economic projections as provided in the Indemnification Agreement. You have an option to acquire the project from the limited partnership at the end of 15 years, provided you are still the general partner at that time. You have entered into a management agreement with a third party to manage the project.

You have entered into an Operating Deficit Guaranty Agreement, an Indemnification Agreement, a Guarantor Fee Agreement, and a Development Services Agreement in connection with the limited partnership project. Under the Development Services Agreement, you are obligated to pay [REDACTED] and [REDACTED] over \$[REDACTED] each. The Operating Deficit Guaranty Agreement requires you and [REDACTED] to advance funds to the limited partnership to pay operating expenses whenever the limited partnership does not have sufficient funds to satisfy the operating expenses as they become due. [REDACTED] is the chief executive officer of the company for which [REDACTED] works. He is paid a guarantor fee pursuant to the Guarantor Fee Agreement. The Indemnification Agreement requires you and [REDACTED] to indemnify the limited partner for certain economic projections in the limited partnership agreement. You have also entered into an Agreement with [REDACTED] pursuant to which [REDACTED] is entitled to one-half of the fees and proceeds paid to you in connection with the [REDACTED] Project, including the right to acquire one-half interest in the project from the limited partnership under the option agreement.

You also intend to invest in other low-income projects. You have entered into a contract to acquire a project in [REDACTED] in which at least 35% of the units will be rented to low-income tenants earning 80% or less of the median income and at least 20% of the units will be rented to very low-income tenants earning 50% or less of the median income. You have indicated that the [REDACTED] area has recently suffered economic difficulties and that you intend to operate the project to combat community deterioration. You have not indicated that any governmental agency has designated this area as economically distressed.

You also intend to acquire Section 8, HUD projects. You have indicated that, other than the [REDACTED] project, any future low-income housing project that you invest in will have at least 75% of the units rented to persons earning 60% or less of the area's median income. You have stated that you will not be financially responsible for the costs investigating the acquisition of any future projects. Developers interested in pursuing a project will be responsible for paying all expenses in

investigating the project. If you decide to acquire the project, you will determine the compensation to be paid to the developer. The developer may or may not be a related party.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax for corporations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the corporation's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes, but will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. The organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that "charitable" is used in its generally accepted legal sense and includes relief of the poor and distressed.

Revenue Ruling 70-585, 1970-2 C.B. 115, held, in part, that an organization formed to engage in a program for new housing construction and the renovation of existing housing for sale to low income families on long-term, low payment plans may be exempt from federal income tax under section 501(c)(3) of the Code. However, it also held that an organization formed to build affordable decent, safe and sanitary housing for moderate income families was not exempt from federal tax as an organization described in section 501(c)(3) of the Code as its program was not designed to provide relief to the poor or to carry out any other

████████████████████

charitable purpose within the meaning of the regulations under section 501(c)(3).

You are not organized and operated exclusively for exempt purposes under section 501(c)(3) of the Code. Your obligations as the general partner of the ██████████ partnership are not limited to activities which further your exempt purpose. Pursuant to the various agreements you have entered into with regard to the ██████████ project, you are required to operate the project so that the limited partner receives certain economic benefits. If these economic benefits are not met, you are jointly and severally liable with ██████████ to making payments to ensure the limited partner receives these benefits and you may be removed as general partner. Therefore, you are operating substantially for the private benefit of the limited partner.

In addition, you are operating substantially for the private benefit of ██████████. In return for his entering into the various guaranty agreements, he is entitled to one-half of any fees or distributions you receive in connection with the ██████████ project. He is also entitled to acquire a one-half interest in the project pursuant to the option agreement you have with the limited partnership.

Furthermore, you are obligated to pay substantial fees to two members of your board of directors and may pay additional fees to them in connection with future projects. Thus, you are operating for the private benefit of those directors.

Finally, while you have indicated that most projects you will acquire will be substantially devoted to providing low-income housing, the ██████████ project will primarily be occupied by moderate income tenants. Although you have stated that you will be operating this project to combat community deterioration, you have not submitted any supporting evidence to establish that this community is economically depressed. Therefore, you have not established that this project will further your exempt purposes.

Accordingly, you do not qualify for exemption from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). Contributions to you are not deductible under section 170 of the Code. You must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted

[REDACTED]

within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your Key District Director in . Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Attn: [REDACTED]
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 4

[REDACTED]

cc: [REDACTED]

cc: [REDACTED]

cc: State Officials of [REDACTED]

[REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]						
Surname								
Date	10/28/93	1/5/98						

11/5/73